

substantive or informational nature may be made by the Commission or its staff, and will not necessarily be the result of action taken specifically by order or entry. The staff will maintain, at all times, an updated and current copy of the Registration Form. In addition, an updated Registration Form will be maintained on file in this docket.

2. Service Requirements Form

In an attempt to reduce the volume of standardized language which would otherwise be required to appear in a NEC's informational tariff, the Commission has devised the Service Requirements Form for use in conjunction with the Registration Form on or after August 15, 1996. The purpose of this form is to set forth specific Commission-mandated language which, if it did not appear within the Service Requirements Form, would need to be included in the tariffs of each NEC subject to competition, as applicable to the scope of its operations. Rather than have the required standardized language repeated in so many tariffs, the Commission will permit each NEC subject to competition to file a Service Requirements Form along with the Registration Form indicating which language pertains to the provider's operations. In addition, on the face of the Registration Form, the provider will commit to conducting its operations in conformity with all applicable service requirements indicated thereon. The Service Requirements Form may be revised from time to time. Changes of either a non-substantive or informational nature may be made by the Commission or its staff, and will not necessarily be the result of action taken specifically by order or entry. The staff will maintain, at all times, an updated and current copy of the Service Requirements Form. In addition, an updated Service Requirements Form will be maintained on file in this docket.

3. TRF Docket

By entry dated February 6, 1990, in Case No. 89-500-AU-TRF (89-500), the Commission established tariff filing and maintenance procedures for all utilities. At that time, the Commission began the practice of assigning a separate tariff docket (under a TRF purpose code) to each utility. TRF dockets are designated for the filing of final tariffs and are maintained by the Commission for each utility company, including LECs subject to competition. Under the local competition guidelines the Commission will continue to employ the tariff filing and maintenance procedures established in 89-500.

4. Tariffs

Under the local competition guidelines, in order to provide local exchange services in the state of Ohio, a LEC must maintain on file with the Commission, complete tariffs which, at a minimum, must include a title page, a description of all services offered, including all terms and conditions associated with the provision of each service, a description of the actual serving and local calling areas, a complete price list, and a notation reflecting both the issuance and effective date.

5. Time Frames

Certain filings pursuant to these guidelines will be handled through an automatic process. With the exception of 0-day filings, an automatic time frame will begin on the day after a filing is made with the Commission's Docketing Division. Furthermore, under an automatic process, if the Commission does not take action before the expiration of the filing's applicable time frame, the filing shall become effective as early as the following day. However, nothing in these guidelines precludes the Commission from imposing a full or partial suspension on 0-day filings on or after the effective date.

6. Suspensions

Under the local guidelines, the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner may fully or partially suspend an application for either a definite or indefinite period of time. If the suspension is for an indefinite period of time, the Legal Director, Deputy Legal Director, or Attorney Examiner may remove the suspension and reinstate a new automatic time frame for approval. A full suspension, which can be imposed either before or after the passing of any automatic or notice time frame, will prevent the suspended service offering or involved regulated activity from either becoming or remaining effective. Under a partial suspension, the service offering or involved regulated activity is allowed to become or remain effective, subject to its continued review, and possible modification, by the Commission. Incompleteness of an application made pursuant to the local competition guidelines may constitute grounds for suspension. Suspensions may be for either a definite or indefinite period of time. The Commission further authorizes the Legal Director, Deputy Legal Director, or Attorney Examiner to remove the suspension imposed on an application which may be suspended for an indefinite period of time and to reinstate a new automatic approval time frame.

VIII. UNBUNDLING

Under the staff's proposal, all LECs had the obligation to unbundle their network and associated functionalities into the most reasonably disaggregated components capable of being offered for resale upon bona fide request of a certified provider or end user. Staff's proposal also set forth the major categories of components subject to unbundling, general unbundling requirements, and the rate requirements associated with purchasing unbundled components. Cincinnati Bell argues that the staff's mandatory unbundling proposal violates the constitutional guarantee against a "taking" of private property for a public use without adequate compensation. A discretionary unbundling provision would, according to Cincinnati Bell, pass constitutional muster. Provided the legal concerns can be addressed, Ameritech suggests adopting a set of criteria by which the appropriateness of an unbundling request could be judged (Ameritech initial comments at 58). A number of commenters suggest that the Commission more fully define the major categories of components subject to

the unbundling requirement. For instance, ICG requests clarification of whether local access includes loop facilities or not (ICG initial comments at 4). Several parties maintain that requiring the NECs to unbundle upon their entrance into the local market is unfair and may actually slow down the penetration that NECs would be able to achieve in the local market. These commenters urge the Commission to afford NECs an incubation period. As a final matter, it has been suggested that the Commission price the unbundled LEC components for use by certified carriers at LRSIC instead of at LRSIC plus some level of contribution.

Several NECs maintain that the 1996 Act significantly affects staff's proposal. For instance, Cablevision and MFS aver that Section 251(c)(3) of the 1996 Act only obligates ILECs to unbundle their systems and that a requirement which forces NECs to unbundle constitutes a barrier to entry (Cablevision supp. comments at 4; MFS supp. comments at 11-12). Ameritech, on the other hand, posits that the FCC will determine the appropriate level of unbundling and, therefore, staff's proposal is superseded by the 1996 Act (Ameritech supp. comments at 8-9). CompTel claims that the 1996 Act provides carriers the opportunity to combine elements into a network platform configuration (CompTel supp. comments at 5). Regarding pricing, MFS maintains that, under the 1996 Act, the ILECs have to set the rates for unbundled components at LRSIC (MFS supp. comments at 12). ALLTEL, on the other hand, suggests that since the services that are part of universal service can only recover a reasonable allocation of joint and common costs, this infers that the remaining joint and common costs will be recovered through other services such as interconnection, unbundled elements, and traffic termination rates.

As pointed out by several parties, the adoption of the 1996 Act obligates ILECs, under Section 251(c)(3), to provide nondiscriminatory access to network elements on an unbundled basis.³⁰ Therefore, the argument that unbundling should be at the option of the ILEC is moot. The 1996 Act also requires the FCC, within six months following the date of enactment, to establish all regulations necessary to determine what constitutes network elements. In making its determinations, the FCC is directed to consider the proprietary nature of the network elements and whether the failure to provide access to any network element would impair the ability of a telecommunications carrier to provide the services it proposes. Under Section 251(d)(3), the FCC may not preclude any state commission regulation, order, or policy that establishes access and interconnection obligations of LECs³¹; is consistent with the requirements of the 1996 Act; and does not substantially prevent implementation of the requirements and purposes of the 1996 Act.

The final guidelines have been modified in light of the provisions of the 1996 Act to reflect that ILEC and facilities-based NECs shall unbundle their respective local

³⁰ This obligation applies to all ILECs not subject to the RLEC exemption or for which a modification or suspension has been obtained pursuant to the procedures outlined for rural carriers in Section 251(f)(2).

³¹ LECs are defined under the 1996 Act as any person engaged in the provision of telephone exchange or exchange access. This definition would include LECs and NECs as those terms are used within this order.

network into elements at any technically feasible point upon bona fide request of a certified carrier. Unbundling shall include access to necessary customer databases such as LEC-owned or controlled 9-1-1 databases, billing name and address, directory assistance, line information database, and 800 databases. Such unbundling should also include operator service, and SS7 functionalities. Unbundled network rates, terms, and conditions shall be established through negotiation between LECs upon receipt of a bona fide request or through arbitration. Rates, terms, and conditions may also be established through tariffs ordered and/or approved by the Commission.

Regarding the pricing of unbundled network elements, Section 252(d)(1)(A) and (B) of the 1996 Act sets forth the parameters a state commission must consider when pricing the unbundled network components. A state commission's determination of a just and reasonable rate shall be based upon the cost of providing the network element, nondiscriminatory, and may include a reasonable profit. Staff's proposal regarding the pricing of carrier-to-carrier services (i.e., LRSIC plus a reasonable contribution to joint and overhead costs) appears to be neither inconsistent with nor would prevent implementation of the 1996 Act; therefore, staff's proposal on pricing as revised to reflect the previous discussion in the Pricing Standards section of this order will be adopted.

We also disagree with Cincinnati Bell's position that staff's unbundling proposal would effectuate an unlawful taking of ILEC private property. According to the company, the Commission has no authority to order a taking of ILEC private property. Cincinnati Bell mischaracterizes the issue by failing to recognize that Cincinnati Bell is a public utility and a common carrier under Title 49 of the Ohio Revised Code. As such, it has voluntarily dedicated the property through which it provides telephone service to a public use. As stated by the United States Supreme Court in *Munn v. Illinois*, 94 U.S. 113 (1877), when private property is devoted to a public use, it is subject to public regulation.³² The Commission, in compelling the ILECs (such as Cincinnati Bell) to restructure the provisioning, pricing, and interconnecting of their networks which have been devoted to a public use into unbundled components, is well within the authority vested in it by the Ohio General Assembly, pursuant to Sections 4905.05 and 4905.06, Revised Code.

Cincinnati Bell further maintains that, even if the Commission did have such authority, Article I of the Ohio Constitution and the Fifth Amendment of the United States Constitution, as made applicable to the states by the Fourteenth Amendment, mandate that when private property is taken for public purposes, the owner shall be compensated. According to Cincinnati Bell, just compensation includes recovery of embedded plant investment and facilities that become stranded as a result of the

³² Conspicuously absent from Cincinnati Bell's legal analysis is any discussion of the most recent United States Supreme Court cases to address taking claims as they relate to public utility property. Additionally, the Ohio Supreme Court, in *Celina*, supra, rejected an unconstitutional taking claim holding that utilities which are subject to regulation by the public utilities act, Section 614-2a, General Code, are subject to different taking standards than private businesses.

introduction of local exchange competition. Assuming *arguendo* that the unbundling proposal amounts to a compensable taking of property,³³ Cincinnati Bell will be justly compensated by the pricing standards for unbundled network components. Under revised guideline V.B., ILECs', including Cincinnati Bell, prices for unbundled network components shall be set so that the ILEC recovers its LRSIC (economic costs) of providing unbundled rate elements plus a reasonable contribution to the joint and common costs incurred by the company as discussed previously in the Pricing Standards section.

In addition, the revised guidelines provide that prices for unbundled network elements may include a reasonable profit. We also disagree with Cincinnati Bell's premise that just compensation includes recovery of investment stranded by the establishment of local exchange competition. First, it is premature to consider this argument as there are no competitive local providers operating in Cincinnati Bell's service territory; therefore, there can be no "stranded investment" at this time. Cincinnati Bell further fails to show with particularity the investment that is in danger of becoming stranded once competition emerges in its service territory. Finally, it is even questionable whether unbundled network facilities purchased by competitors can be properly classified as stranded investment. As noted previously, it is premature and thus unnecessary to address these issues at this time. For all the foregoing reasons, Cincinnati Bell's arguments concerning the unlawfulness of the unbundling proposal are without merit.

As a final matter, we conclude that providing NECs a general incubation period or waiver from the obligations of unbundling does not appear warranted. As pointed out by OCC, while the 1996 Act does not obligate NECs to provide unbundled access to network elements, the 1996 Act does not prohibit this Commission from adopting such a requirement (OCC supp. comments at 18-19). Such a requirement is neither inconsistent with nor does it prevent implementation of the 1996 Act. Further, we find that this obligation is fully consistent with the authority reserved to the states through Section 253(b) of the 1996 Act. We also agree with staff that, because the NECs are likely to have more advanced and efficient networks, providing unbundling will allow the market to utilize the efficiencies and economies of these new networks. Staff recognized that such a proposal will also minimize the unnecessary and uneconomic duplication of facilities. Imposing this obligation on NECs will not create an undue burden as it is unlikely that NECs will be asked to do much unbundling in the near term and then only upon a bona fide request. The bona fide request standard should minimize the economic effects that unbundling will impose on new entrants.

IX. RESALE

Adoption of the 1996 Act also caused significant revisions to the staff's resale proposal. Consequently, the guidelines addressing the resale issue have been fully

³³ By addressing this argument, the Commission is in no way conceding that Cincinnati Bell's taking argument is valid.

rewritten. Section 251(b)(1) and Section 251(c)(4)(B) of the 1996 Act places a general duty on all LECs (both ILECs and NECs) not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services. The 1996 Act also places an obligation on ILECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Finally, the 1996 Act requires state commissions to determine wholesale rates on the basis of retail rates, excluding the portion attributable to any marketing, billing, collection, and other costs that would be avoided by the local exchange provider.

The revised guidelines reflect that all tariffed services in a LEC's end user tariff shall be available for resale. In addition, those LECs providing local service through their own facilities or in combination with its own facilities must maintain a carrier-to-carrier tariff including its resale service offerings and make its service available to any other LEC through resale. In order to offer volume discounts, a LEC may do so through negotiation, arbitration, or through a tariff offering. Finally, LECs may, subject to Commission approval, place reasonable restrictions on the resale of residential services to business customers.

Following adoption of the 1996 Act, most commenters modified somewhat their respective positions on resale. Cablevision argues that while a NEC could not prohibit resale, a NEC could lawfully defer resale until some future event has occurred or time frame has expired (Cablevision supp. comments at 3). MFS, OCC, and OTA agree that all carriers have a responsibility to offer their services for resale following adoption of the 1996 Act (MFS supp. comments at 12; OCC supp. comments at 50; OTA supp. comments at 2). CompTel, MFS, and United/Sprint assert, however, that the 1996 Act only sets pricing parameters for resold services on the ILECs (MFS supp. comments at 13; CompTel supp. comments at 10; United/Sprint supp. comments at 5-6). TCG notes that reasonable restrictions on resale are specifically permitted by the 1996 Act (TCG supp. comments at 8). Ameritech also maintains that the 1996 Act permits reasonable limitations on the resale of telecommunications services. Therefore, according to Ameritech, the Commission should adopt a guideline placing limitations upon the resale of services being offered at promotional rates. Such a limitation is necessary, according to the company, in order to encourage LECs to offer promotions to customers; otherwise, carriers will be discouraged, to the detriment of end users, from offering these beneficial services (Ameritech supp. comments at 12).

In adopting the revised guidelines governing the issue of resale, we have been guided by the principle expressed in the 1996 Act that, at a minimum, a LEC should reasonably offer its services to other providers on a resold basis. We agree that resale is a significant method by which to encourage new providers to enter the market. Therefore, we are adopting guidelines which place reciprocal resale obligations upon all carriers. As a final matter, in accordance with the provisions of the 1996 Act, we direct the ILECs to resubmit new tariff pages which remove all blanket resale restrictions other than restrictions of the resale of residential services to business customers.

X. DIALING PARITY/1+ INTRALATA PRESUBSCRIPTION

Staff's proposal requires all primary exchange carrier (PEC) ILECs, except Ameritech and GTE, to provide intra and interLATA equal access to end users within 12 months of this order. All NECs were to provide intraLATA and interLATA equal access to end users upon their initial offering of certified local exchange service. Ameritech and GTE were directed to implement intraLATA equal access at such time as they were granted interLATA approval or the Commission pledged to revisit the issue. Staff also recommended implementing intraLATA presubscription on a smart or multi-presubscribed interexchange carrier (PIC) basis. Finally, the staff addressed the procedures whereby current and new subscribers could choose a different intraLATA toll provider.

In the attached guidelines, the Commission has made one substantive revision to the staff's proposal. This revision was necessitated by enactment of the 1996 Act which provides interLATA relief to GTE and conditioned intraLATA dialing parity for the Bell Operating Companies³⁴ (BOC) on removal of the interLATA restrictions on those companies. In the event that a BOC has not received interLATA relief within three years of the date of enactment, a state may, at that time, implement intraLATA presubscription. The guidelines have been revised accordingly. While smart or multi-PIC presubscription³⁵ represents a worthy long-term goal, based on a review of the comments, we recognize the general availability of smart or multi-PIC technology and we therefore find that a full 2-PIC methodology is a suitable substitute in the near term. Full 2-PIC presubscription still offers end users the flexibility of choosing the same or different toll providers for their intraLATA and interLATA calls.

The comments on this proposal reflect that NECs believe that they should not be required to offer 1+ presubscription. ICG and AT&T recommend moving up the date that ILECs must offer 1+ presubscription. As previously noted, several commenters recommend implementing intraLATA dialing parity on a full 2-PIC methodology as opposed to a smart or multi-PIC method. Few commenting parties disagreed with staff's proposal that balloting not be used to implement intraLATA toll presubscription. Other commenters disagree with the amount of the intraLATA service order PIC charge that a LEC could recover from end users following expiration of a 90-day grace period. Several ILECs claim that the Commission should tie Ohio's rate to the interstate PIC rate. Other parties propose that a reasonable, cost-based, switching rate be applied. OCC disagrees with both suggestions and recommends adoption of staff's proposal on this issue. A number of parties recommend revising the staff proposal on implementation costs to spread the cost recovery on the basis of intraLATA and interLATA minutes of use (MOUs) as opposed to only intraLATA MOUs.

³⁴ Ameritech is one of the Bell Operating Companies.

³⁵ Smart or multi-PIC presubscription enables subscribers to select multiple carriers for various subdivisions of their intra and interLATA calls.

The Commission determines that commenters have provided no rationale sufficient to justify modifying the staff's proposal regarding the implementation time frame for 1+ intraLATA presubscription. NECs are not harmed by this proposal as the engineering and programming required to permit intraLATA presubscription can be programmed into the switches during installation of facilities prior to commencing operations. In fact, we envision that NECs can use intraLATA presubscription availability as a tool to market their local service in an attempt to obtain customers. The guidelines also recognize that similar engineering and reprogramming of ILECs' switches will have to take place in order to implement this proposal. Therefore, providing them a 12-month period of time to accomplish this task is justified. Regarding the service order charge, we are unconvinced by the arguments seeking to modify the staff's position. In any event, no party offered substantive proof that the proposed charges are either uncompensatory or burdensome nor was there any significant support for an alternative position.

The final issue involves the appropriate compensation method for recovering the implementation costs of intraLATA presubscription. We find that the most appropriate method of cost recovery is to spread the implementation costs over all minutes of use presubscribed on an intraLATA basis rather than over combined interLATA and intraLATA MOUs. Basing cost recovery solely upon intraLATA MOUs was approved by this Commission in *Cincinnati Bell*, Case No. 93-432-TP-ALT, Opinion and Order (May 5, 1994) and *Western Reserve*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994). In those two cases, Cincinnati Bell and Western Reserve, as part of their respective alternative regulation plans, agreed to implement intraLATA presubscription. Those two ILECs have not, to date, argued that a cost recovery mechanism based solely upon intraLATA MOUs overburdened them. Further, as one commenter noted, basing cost recovery for intraLATA presubscription partially on interLATA MOUs could unequitably cause cost recovery from providers not involved in the intraLATA market.

XI. NON-DISCRIMINATION BETWEEN COMPETITORS

Staff's proposal requires LECs to report and justify, on an ongoing basis, denied and unfulfilled carrier service requests. The NECs commenting on this issue suggest that the staff's proposal did not go far enough. CompTel and AT&T set forth comprehensive lists of additional support services and interfaces that are necessary for NECs to successfully compete against the ILECs (CompTel initial comments at 25-28; AT&T initial comments, Appendix A, Part 1 at 45). AT&T also recommends that the Commission require the incumbents to establish mechanized interfaces essential to providing prompt customer service (AT&T initial comments, Appendix A, Part 1 at 45). The ILECs generally argue that this provision should be deleted. However, should the Commission desire to maintain this requirement, the ILECs recommend clarifying this requirement by stating that only unfulfilled bona fide requests need be reported.

The proposed guidelines would also require all LECs to submit annual TPM data submissions. There was almost universal opposition from all commenters to the provision of this information in a competitive environment. Ameritech even claims that Section 256 of the 1996 Act eliminates this Commission's role of overseeing coordinated network planning. If the information were to be provided, however, a number of commenters suggest the submissions be required on a less frequent basis. Further, staff's proposal prohibits LECs from accessing the customer proprietary network information (CPNI) of another interconnecting carrier or reseller for the purpose of marketing services to the interconnecting carrier or resellers customers. MFS urges the Commission to broaden this provision to include prohibiting ILECs from soliciting a NEC's customer where the competitive carrier is in the process of ordering bottleneck facilities from the LEC in order to provide service to the end user (MFS initial comments at 45). Ameritech maintains that the LEC should have every right to seek to retain customers when a competitor is ordering a facility such as the local loop. In any event, Ameritech claims that there is no need to expand the CPNI requirements beyond those set forth by the FCC (Ameritech reply comments at 48). The staff's final proposal in this section addresses installation and maintenance. This provision requires ILECs and NECs to provide to competing carriers installation, maintenance, and repair within the same time intervals that the carrier provides itself. Ameritech suggested revising this to reflect that all carriers treat other certified carriers in a nondiscriminatory manner while MFS argues that staff's proposal is absolutely necessary in order to avoid potential discrimination (Ameritech initial comments, Appendix 3 at 40; MFS initial comments at 41).

We find that the provision of TPM data by all LECs will afford us a valuable tool to measure the extent to which competition is advancing throughout the state. In *Telecommunications Performance Measurement Database*, Case No. 91-52-TP-UNC (January 17, 1991), we established that the TPM includes market information, network data, and service quality data. Contrary to Ameritech's position, nothing within the 1996 Act prohibits this Commission from requiring the submission of TPM data to monitor the competitive marketplace in Ohio. In fact, we have noted that the purpose of the TPM data is to monitor market information, network data, and service quality. To the extent these filing requirements are imposed on all providers in a competitively neutral fashion, we find that submission of TPM data is necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers all in accordance with the authority reserved to the state's through Section 253(b) of the 1996 Act. Such information is also necessary since the states have been given an advisory role under the 1996 act concerning BOC entry into long distance.

The Commission does not find any justification for broadening the staff's proposal regarding CPNI. The proposal as written is sufficiently broad to encompass a variety of situations. By attempting to list every potential act which may constitute a violation of this guideline we run the risk of misleading carriers into believing that a nonlisted action does not constitute an unreasonable practice. Should any local

provider be the subject of an act which they deem discriminatory, the recourse is to file a complaint under Section 4905.26, Revised Code. Finally, we determine that staff's installation, maintenance, and repair proposal should be adopted as proposed. Ameritech's revision could be interpreted such that a provider would be in compliance even if it offered a lesser installation, maintenance, and repair interval than it provides itself as long as it treated all other LECs in a similar fashion. Staff's proposal, on the other hand, requires all carriers to provide the same service to others as it provides to itself. This standard is superior to Ameritech's standard.

XII. RIGHT-OF-WAY

Staff's proposal set forth standards to guide all local service providers regarding the issue of public and private right-of-way. Those commenters representing the interests of municipalities express concern that staff's proposal affects their ability to regulate the public right-of-way within their jurisdictions. United/Sprint maintains that the Commission is without jurisdiction to promulgate guidelines which attempt to regulate these arrangements (United/Sprint initial comments at 37). Several ILECs state that the proposed provision regarding private building, riser, and conduit space amounts to an impermissible finding of fact and conclusion of law. MFS submits that the Commission should seek legislation to prevent building owners from denying NECs access to their buildings or charging exorbitant fees for such access (MFS initial comments at 42). The next section of staff's proposal set forth the terms and condition under which carriers could obtain access to and the rates to be charged for access to poles, ducts, conduits, and right-of-way. The ILECs commenting on this section express concern regarding the ability of poles and conduit to hold more capacity. The ILECs also generally claim that the FCC pole attachment formula is not the appropriate compensation mechanism to charge competitive providers for pole attachments. MFS asserts that the Commission should maintain the FCC pole attachment formula and should require rates for conduit space and access to right-of-way to not exceed LRSIC (MFS reply comments at 28).

The 1996 Act places a duty on all local exchange carriers to provide access to the poles, ducts, conduits, and right-of-way to competing providers of telecommunications services on rates, terms, and conditions consistent with 47 U.S.C. 224. The 1996 Act also provides that both the terms and conditions of access to poles, ducts, conduits, and right-of-way of a telecommunications carrier shall be resolved through negotiation. Further, the FCC, pursuant to Section 703(e)(1) of the 1996 Act, is directed to prescribe regulations to resolve compensation matters when the parties fail to resolve a dispute on their own.

Based upon the comments submitted on this proposal, the Commission finds that some clarification is warranted. We do not read staff's proposal as affecting any of the constitutional or statutory rights presently possessed by municipalities in governing the public right-of-way within their jurisdictions. Neither are we attempting, by adoption of these standards, to extend our jurisdiction into areas where we have no legislative authority. It is indisputable that NECs must have nondiscriminatory access

to right-of-way. The General Assembly has afforded the Commission jurisdiction over a number of right-of-way issues. Given the importance of this issue to the provision of competition for local services, we find that it is appropriate to promulgate guidelines outlining the rights and responsibilities of public utilities on this issue. Thus, we find that it is appropriate to adopt staff's proposal in this regard with a minor revision. We will revise the language dealing with building riser space to clarify that any arrangements entered into between a telephone company and a private building owner should not exclude the use of riser space, conduit, and closet space by other telephone companies. We find that, with these minor textual revisions, the staff's proposal provides a framework informing local service providers of their rights and responsibilities under both Ohio and federal law. Finally, in light of the fact that the FCC will not promulgate rules to govern the compensation of local carriers for providing access to poles, ducts, conduits, and right-of-way for up to two years, staff's recommended compensation method is a reasonable proposal.³⁶

XIII. UNIVERSAL SERVICE

Like compensation, the staff's proposed guidelines concerning universal service have undergone significant revision due to the enactment of the 1996 Act. Therefore, in lieu of setting forth the staff proposal, we will set forth the revised proposal and then address only those comments which are applicable to the revised proposal. The Definitions Section sets forth a list of services that, at a minimum, must be made available at affordable rates to all who desire such services. In the revised guidelines, the reference to a 400-minute usage package has been replaced by a requirement to make available flat-rate service. The list of services comprising universal service will be reviewed periodically by the Commission as telecommunications and information technologies and services advance and as societal needs dictate. We note that the ability to transmit data at a minimum base rate of 9600 offered as a part of universal service will facilitate use of and access to the internet. Also reflected in the revised guidelines are separate and distinct components for universal service funding (USF) assistance, determinations and calculations for USF contributions, targeted and specific high cost and low income support programs and withdrawal criteria, and a selection procedure for a USF administrator subject to Commission oversight.

Several commenters claim that inclusion of a usage package as part of the basic telecommunications service is problematic. Consumer interests maintain that these commenters have provided no support or rationale for their position. The Ashtabula Coalition notes that there will be consumer revolt should the Commission fail to include some level of flat-rate service under universal service (Ashtabula Coalition initial comments at 7). Other commenters seek to eliminate, add, or modify various services to the universal service list. ALLTEL and GTE recommend restructuring the proposal to eliminate the second tier of universal service (ALLTEL initial comments,

³⁶ Under the terms of 1996 Act, any increases in the rates for pole attachments that result from adoption of the requirements in the act are to be phased in over a period of five years following the date of enactment.

Attachment 2 at 28; GTE initial comments, Appendix B at 35). Ameritech and GTE seek to broaden the funding sources of the USF (Ameritech initial comments, Attachment 3 at 43; GTE initial comments, Appendix B at 37-38). New Par, on the other hand, argues that the Commission lacks the requisite authority to require cellular providers to contribute to a universal service fund (New Par initial comments at 6-7). Consumer interests urge the creation of a Telecommunications Literacy and Access Fund with all carriers being assessed to offset the costs of this program.³⁷ In addition, OCC maintains that a portion of low income assistance should include funding to provide equipment to allow the communicatively impaired access to the telecommunications network (OCC reply comments at 114).

A number of commenters, currently engaged in the provision of interexchange services, sought a dollar-for-dollar access charge or other targeted funding requirement (i.e., carrier common line charge and residual interconnection charge) reduction based upon the revenues paid into the USF for each ILEC and SLEC. According to MCI, such a dollar-for-dollar reduction is necessary in order to ensure against a double recovery from interexchange carriers (MCI initial comments at 49). Several ILEC commenters assert that only incumbent carriers should be able to obtain USF monies because only ILECs have carrier of last resort (COLR) obligations. Other ILEC commenters propound that only facilities-based carriers should have access to universal service funds. OCC rebuts the ILECs' assertion by stating that the costs to serve high cost areas do not arise primarily from the COLR obligation (OCC reply comments at 113). Similarly, OTA recommends that the ILECs should only bear the carrier of last resort obligations for three years by which time the Commission will have concluded a proceeding to establish the appropriate standards for COLRs (OTA initial comments at 30).

Regarding low income assistance, OTA posits that adoption of an expanded telephone assistance program beyond what is currently in place would be clearly contrary to the General Assembly's intent. Moreover, if the proposal is to allow recovery of the costs of expanding the current telephone assistance programs through the current universal service funds, such an event would necessitate an amendment to the statutes relating to the current tax credit. Since the Commission is without authority to amend programs enacted by the General Assembly, OTA argues the Commission should revise the proposal accordingly (OTA initial comments at 31). OCC argues that the current statutes only speak to the parameters of the program to be supported by tax revenues; it did not forbid any other program funded by telecommunication users (OCC reply comments at 116).

Numerous commenters responded to the questions appended to the staff proposal concerning the appropriate manner in which to design a high cost proxy model that is representative of high cost subscribers generally, and that could be used in

³⁷ The City of Cleveland also proposes liberalized payment arrangements, local disconnection only for the nonpayment of local service charges, and the establishment of a minimum repayment requirement in order to reestablish service. As pointed out by Ameritech, these issues are under consideration by the Commission in Case No. 95-790-TP-COI and need not be addressed in this docket.

place of detailed company-specific cost studies. Cincinnati Bell claims that there is substantial variability between individual ILECs; thus, it is impractical to establish a statewide average cost to identify low versus high cost areas (Cincinnati Bell initial comments, Appendix D at 4-5). Cincinnati Bell also argues that due to the unique characteristics of each ILEC, all LECs would need to perform their own cost studies (*Id.*). OCC submits that the variability between individual ILECs may have more to do with management decisions and little to do with actual local cost characteristics (OCC reply comments at 120). OCC also notes that Cincinnati Bell fails to acknowledge that, unless the LEC performs a cost study for each subscriber, any combined cost study is necessarily a proxy for true costs. Therefore, according to OCC, unless individual cost studies are to be performed, a statewide proxy makes more sense than individual company-specific studies (*Id.*).

OTA and United/Sprint aver that the administrative expenses associated with the development of company-specific studies are quite large and, consequently, could prove to be burdensome to the ILECs (OTA initial comments at 41; United/Sprint initial comments at 53). For this reason, United/Sprint recommends that the Commission use the Benchmark Cost Model (BCM) as a proxy for individual telephone company developed costs.³⁸ Ameritech maintains that the BCM may be an appropriate mechanism to distribute funds from the USF but it is not an appropriate vehicle for sizing the universal service fund (Ameritech reply comments at 60). Ameritech further avers that, until all parties are comfortable that the BCM is a reasonable proxy for actual cost, actual cost should be used to determine the need for high cost funding (*Id.*). OCTA submits that the use of company-specific or proxy-costing studies is not likely to produce any useful information due to the variables and inputs used to develop such studies (OCTA initial comments, Appendix C at 12).

Having thoroughly reviewed the voluminous comments submitted on universal service, the Commission makes the following determinations. The arguments concerning adoption of a particular usage package are no longer relevant in that the revised guidelines require that NECs desiring to receive USF funds must only make a flat-rate service option available. Those commenters seeking to eliminate, add, or modify various services included on the list of universal services have failed to justify their positions; therefore, those positions need not be further addressed. The Commission does, however, agree with those commenters seeking to eliminate the second tier of universal service.

On the issue of which carriers should contribute to Ohio's USF, we note that all Commission-registered telephone companies having intrastate regulated revenues shall pay into the intrastate fund. Moreover, contrary to the argument raised by New Par, Section 254(f) of the 1996 Act specifically provides that "(e)very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." New Par also

³⁸ The BCM was jointly developed by MCI, NYNEX Corporation, Sprint Corporation, and US West Inc.

submits that the proposed revenue tax funding mechanism is anti-competitive and discriminatory against wireless providers. New Par's assertions regarding the lawfulness of a revenue tax funding mechanism are premature at this time. As noted above, the Commission is proposing to base Ohio's USF upon the TOTAL intrastate revenues of all certified providers. By this order, the Commission is not calculating any certified carriers' specific USF obligation. To the extent New Par desires to raise this issue in a future USF proceeding, the company is not prohibited from doing so.

Regarding the dollar-for-dollar decrease argument raised by the IXC's, we agree with the arguments raised by OCC that this proposal incorrectly assumes that all support for universal service comes from access charges. Moreover, we note that, with the exception of the recent stipulation reached in the Ameritech alternative regulation proceeding, there has been no corresponding commitment made on behalf of the IXC's to pass the savings from access charge reduction on to consumers in the form of lower toll rates. In addition, the IXC's presented no proposal to ensure that those monies are returned to consumers proportionally to how they were collected. Other commenters have argued that only ILECs should have the ability to withdraw funds from the USF due to the requirement that the incumbent providers continue as the carrier of last resort at the present time. We determine that the most appropriate manner in which to encourage facilities-based providers to serve all high-cost subscribers is by allowing all such providers to withdraw from the state USF at least during this interim period until and unless a bidding process, or some other mechanism to assign carrier of last resort obligations, is finalized and an award has been made. Otherwise, there would be little if any incentive for NECs to seek to serve areas determined to be high cost. Contrary to the concern raised by OTA that the ILECs will be forced to continue as the COLR, we are committed to evaluating whether to implement a bidding process or some other mechanism for the COLR obligation within 12 months of issuance of these guidelines. Obligating ILECs to continue, for such a short time frame, the responsibilities they already are performing does not appear overly burdensome.

Concerning OTA's argument on the expansion of low income assistance, we agree with OCC that the current statutes only affect the parameters of the program to be supported by tax revenues. We have required NECs to immediately offer telephone service assistance and service connection assistance to eligible customers. Moreover, we have indicated our intent to establish an incentive for the offering of expanded lifeline programs, such as those offered in the Ameritech alternative regulation case, through a crediting to USF obligations for those ILECs and NECs who offer such programs outside of alternative regulation commitments. We have also, through the revised guidelines, adopted a proxy model based upon the BCM to identify high cost support benchmark costs. In so doing, we are acknowledging the concerns expressed that the administrative costs associated with performing company-specific cost studies are quite burdensome for all LECs. In adopting this approach, we also recognize that there are alternative methods of calculating benchmark costs. Therefore, any LEC may petition the Commission to adopt alternative benchmark costs based on a company-specific analysis.

The burden of proving to the Commission that the alternative method more accurately reflects true LRSIC costs within a given high-cost study area is on the applicant.

The final issue which needs to be addressed on this subject involves establishing a procedure to implement the universal service guidelines adopted by this order. Contrary to the position expressed by Cincinnati Bell, we determine that it is not necessary to have a universal fund mechanism in place prior to promulgating these guidelines governing local competition. To adopt Cincinnati Bell's position would indefinitely delay the commencement of competition in this state and would shore up the ILECs' monopoly position within their service territories. Cincinnati Bell's position also could be deemed a barrier to entry generally prohibited by adoption of the 1996 Act. We have, however, in response to Cincinnati Bell's comments, set forth a specific framework which details obligations of NECs and a model for cost recovery by the ILECs so that there will be little doubt of our policy intentions in this area.

XIV. NUMBER PORTABILITY

Staff's principles concerning number portability recommended that end users should have the ability to retain the same telephone number when changing from one local provider to another as long as the end user remains within the same NXX code. To accomplish that end, staff proposed that, where facilities permit and upon a bona fide request for interconnection by a certified local service provider, a providing carrier would have an obligation to provide true service provider number portability. Where facilities do not permit, staff maintains that interim service provider portability be provided on a DID or RCF basis. Staff also proposed Ohio-specific number portability guidelines which any number portability solution must support.

One commenter, Cincinnati Bell, questions whether number portability is really necessary for local exchange competition (Cincinnati Bell initial comments, Appendix B at 28-29). Cincinnati Bell further opines that the costs associated with any form of number portability will be significant and, therefore, the Commission must conduct an analysis to determine whether the costs outweigh the benefits of number portability received by customers. Several ILECs also maintain that requiring a permanent number portability solution within 12 months of a bona fide request for interconnection is an impossible implementation schedule. The NECs commenting on this issue primarily argue that a permanent number portability solution is one of the most significant factors necessary to establish local exchange competition. Without a numbering solution, the NECs claim that local competition will never happen due to customer inertia and because, without a permanent solution, many sophisticated feature package functions (such as CLASS services) cannot be offered or can only be offered in an inferior manner thus rendering NECs' service less than adequate as compared to the ILECs' service. On the timing issue, the NECs assert that there are a number of ongoing number portability trials and that the Commission should merely adopt one of those and make any minor adjustments necessary to provide an Ohio-specific solution.

There was no debate among commenters in this matter that, to the extent technically feasible, number portability is required of all LECs under Section 251(b)(2) of the 1996 Act. Further, the 1996 Act instructs the FCC to adopt guidelines on this matter within six months of the date of enactment. In addition, the parties agree that the 1996 Act mandates that the costs of a number portability solution shall be borne by all telecommunications carriers on a competitively neutral basis. New Par asserts that the 1996 Act does not impose number portability obligations on wireless providers or other non-LEC telecommunication service providers and neither should this Commission. The primary area of disagreement over the 1996 Act pertains to the appropriate cost recovery mechanism for interim number portability solutions. Ameritech claims that the 1996 Act does not set forth rate standards governing interim number portability and, as a result, this service is subject to the just, reasonable, and compensatory rate standard under Ohio law (Ameritech supp. comments at 15). OCC opines that, since interim number portability falls under the definition of a network element as used in the 1996 Act, the Commission can require its provision at LRSIC and need not include a reasonable profit in the price. MFS maintains that Section 251(e)(2) of the 1996 Act precludes the Commission from assigning the costs of interim number portability exclusively to consumers whose numbers are forwarded or to the carriers from which they have elected to take service (MFS supp. comments at 15).

The Commission is of the opinion that a permanent true number portability solution has significant benefits for establishing effective competition in this state in addition to providing greater choice benefits to end users. During the comment cycle established in the proceeding, Illinois adopted location routing number (LRN) true service provider number portability. LRN refers to a database system which does not rely on an absolute need to transport ported calls through the ILEC's network. In addition, unlike RCF and DID, LRN allows enhanced calling services relying on number identification to function as designed. We find that the benefits promised by adoption of LRN true service provider number portability far outweigh any unspecified problems. Therefore, we find it appropriate for Ohio to adopt LRN true service provider number portability as the appropriate permanent number portability solution for Ohio. The Commission shall schedule a state-wide LRN number portability workshop within 120 days of the issuance of these guidelines. The workshop will seek to establish the time frame and manner of the implementation of LRN number portability in the state of Ohio. The costs of implementing this permanent number portability solution shall be borne by all telecommunication carriers in accordance with Section 251(e)(2) of the 1996 Act.

Where facilities do not permit the introduction of LRN true service provider number portability upon a bona fide request, we find that number portability is sufficiently important to warrant the imposition of interim number portability on an RCF or DID basis. The rates which are established to provide an interim number portability solution will be an appropriate issue for inclusion in an interconnection agreement. This determination is consistent with the statement of the congressional Committee of Conference which found that the method of providing interim number

portability and the amount of compensation, if any, for providing such service is subject to the negotiated interconnection agreement pursuant to Section 251 of the 1996 Act.

As a final matter, we agree with New Par that, to the extent an entity is engaged solely in the provision of commercial mobile service pursuant to 47 U.S.C. 332(c), neither interim nor permanent number portability must be offered at this time. However, we would note that the 1996 Act places a general duty on all telecommunications carriers, including commercial mobile service providers, not to install network features, functions, or capabilities that do not comply with the guidelines and standards to be established by the FCC concerning access by persons with disabilities and coordination for interconnectivity. We expect all commercial mobile service providers to abide by this standard in engineering and installation of their systems.

XV. NUMBERING ASSIGNMENT AND ADMINISTRATION

Staff proposed that, prior to a resolution of number assignment and administration responsibilities on a national or industry level, there should be no state-specific requirement for Cincinnati Bell and Ameritech to transfer these responsibilities. Several commenters suggested that the Commission insert a nondiscrimination requirement in the proposed rule while other commenters opine that the Commission should establish a numbering administration oversight committee or transfer the responsibilities to a neutral third party. The 1996 Acts directs the FCC, as the entity with jurisdiction over the North American Numbering Plan pertaining to the United States, to create or designate one or more impartial entities to administer telecommunications numbering and to make numbers available on an equitable basis. The 1996 Act permits the FCC to delegate to the state commissions all or any portions of its jurisdiction.

In light of the fact that the FCC has pending an investigation on number administration issues (CC Docket 92-237) and because the 1996 Act requires the FCC to take action in this area, the Commission can find no reason, at this time, to establish a mechanism to address number assignment and administration responsibilities.

XVI. DIRECTORY LISTINGS

Staff's proposal reiterates the customer listing requirements placed on LECs by the MTSS. The proposal also clarifies that LECs may purchase the provisioning of published directories and directory assistance from other providers. The proposal makes clear, however, that it is the carrier's responsibility to comply with the MTSS in provisioning service to end users. Finally, the staff's proposal touches on competitor listings and updates to published directory and directory assistance listings. Those ILECs commenting on staff's proposal suggest that all LECs should be responsible for providing directories covering their own local calling areas and that such a proposal may satisfy customer needs at greater convenience and less cost. The NECs essentially assert that the ILECs should be obligated to provide directories and directory assistance at

no charge to the NECs. The Ashtabula Coalition posits that, without a requirement that a carrier's local calling area encompass the end user's entire county of residence, the directory issue will just further confuse end users (Ashtabula Coalition's initial comments at 8-9).

Having fully considered the comments filed concerning the proposed guidelines, we determine no changes are warranted. Staff's proposal correctly recognized that the obligation to provide directories, directory listings, and directory assistance is one most appropriately placed on the serving LEC. Staff's proposal also affords the NECs flexibility in that it recognizes that there are different methods by which a NEC can fulfill its regulatory obligations to consumers. The NEC may provide this service itself or the NEC may obtain these services from other parties, including ILECS which have the duty to negotiate such matters in good faith. Further, we fully expect that, with the advent of local competition, there will be an increase in the number and services provided by alternative providers of directories and directory assistance. Adopting staff's proposal regarding directory listings will maintain accountability for directory provisioning, creates no unequal burdens, allows market forces to benefit carriers and end users, and keeps a check on end users' need to utilize the ever-increasing numbers of directories to access local numbers. Placing the obligation of providing directories on NECs' will benefit end users by providing them with a single directory which encompasses all local listings in the service area. Placing this obligation upon the ILECs may be unreasonable because the ILEC may not have all necessary customers in its database to produce a directory since NECs have the ability to self-define their service and local calling areas. As a final matter, we acknowledge the concern raised by the Ashtabula Coalition and pledge to monitor and take corrective action as necessary to address situations involving end user confusion.

XVII. INTERCONNECTION TECHNICAL STANDARDS

Staff's proposal on this issue touches on a number of areas including disclosure requirements, network modifications, facilities, minimum compliance, technical requirements and changes in technical standards, service quality, federal requirements, and support functions. Consumer groups, new entrants, and the FEAs concur with these provisions of staff's proposal. NENA asserts that prompt access to 9-1-1 and E9-1-1 should not depend on the success of free-ranging negotiations and, therefore, this commenter suggests adoption of a non-discriminatory, cost-based tariff to allow carriers to use one another's databases (NENA initial comments at 4). ILECs maintain that, where another carrier's technical requirements require a modification to the ILECs facilities, the cost of those modifications should be recovered on an individual basis. There was some agreement among the commenters that "essential support functions" should be provided on a cost-based, nondiscriminatory basis (ICG initial comments at 5; Ameritech initial comments Attachment 3 at 53; AT&T initial comments, Appendix A, Part 2 at 50).

In considering whether any revisions are necessary to this portion of the guidelines, we note our agreement with the FEAs that "business and residence subscribers have benefited from cooperation between interexchange carriers and local exchange carriers" and that "they correctly expect the same level of cooperation between multiple local carriers" (FEAs initial comments at 25). Having set forth that guiding principle, we affirm for the most part staff's proposed guidelines on this issue. One revision necessitated by adoption of the 1996 Act is that the cost of network modifications relating to interconnection tariffs should be removed and replaced with a requirement to negotiate the costs of non-standard interconnection arrangements among interconnecting carriers. Another revision made necessary by the 1996 Act is that the technical standards section should be amended to reflect that a LEC must make available to other LECs technical interfaces that are at least equal in quality to that which it provides itself and such interfaces must be made available to similarly situated carriers upon request. The final revision was made to reflect that changes in technical requirements must be provided to other interested parties at the same time notice is given to all interconnecting carriers and to the Commission.

XVIII. CONSUMER SAFEGUARDS

Under this section, staff proposed standards that would apply to all LECs concerning customer information and education as well as prohibiting certain marketing practices. Specifically, the staff recommends that carriers should provide full and complete materials from which customers can make informed decisions. However, the Commission, should it encounter a LEC abusing this section, reserves its right to require, review, or request modification to customer notices and other education materials. Regarding marketing, the staff proposes to prohibit certain unfair or deceptive marketing practices. Finally, the staff noted that certified carriers engaging in the practice of unauthorized switching of an end user's LEC would be subject to penalties and remedies under the Ohio Revised Code.

Several ILECs commenting on the customer education proposal maintain that this provision is unnecessary and would result in needless regulatory burden with no articulation of the possible benefits. Commenters representing consumer interests applaud the staff's proposal and sought additional requirements that would, in their opinion, strengthen the proposal. Regarding marketing practices, United/Sprint and Ameritech assert that the Consumer Sales Practices Act (CSPA), set forth in Chapter 1345, Revised Code, specifically exempts transactions between public utilities and their customers from its coverage (United/Sprint initial comments at 60; Ameritech initial comments at 122). Consumer commenters point out that the CSPA exempted public utilities due to the extent of regulation those entities were subject to by the Commission. Thus, to the extent the Commission loosens regulation in this proceeding, it would be appropriate to subject those carriers to the CSPA. OCC even recommends that the Commission seek the lifting of the exemption the CSPA provides public utilities (OCC initial comments at 84). Toledo asserts that the Commission should affirmatively afford end users the same ability to seek redress of violations of the

CSPA as the Commission has reserved to itself (Toledo initial comments at 5). Many commenters recommend expanding the slamming provisions to include all local exchange services.

The Commission determines that the guidelines concerning customer education and prohibitions on deceptive marketing practices should be adopted. Contrary to the arguments set forth by the ILECs on customer education and marketing, we believe that these are perhaps the most important consumer provisions within these guidelines. As all parties, acknowledge, including the ILECs, it is the consumers who should benefit from basic local exchange service competition. To the extent that all LECs clearly and accurately inform customers of their respective service offerings and point out, where appropriate, customers' options, the Commission has no reason to require pre-approval before certain marketing and customer education material is utilized. However, past experiences have taught us that it would be unwise to merely allow the companies to compete for customers and market services without some level of regulatory review. As a result of competition in the interexchange market, Ohioans have been subjected to a host of deceptive marketing practices, including slamming. According to records maintained by our consumer services department, complaints to our Public Information Center (PIC) hotline on these matters have increased from 375 slamming contacts in 1993 to 1398 contacts in 1995. Moreover, in the first five months of 1996, our PIC hotline has logged 993 contacts concerning slamming. Following some reasonable period under which we are operating in a competitive market, the Commission may reevaluate the rationale for this requirement and, should conditions warrant, revise or remove it accordingly.

We also acknowledge that the CSPA specifically exempts transactions between public utilities and its customers from its provisions. Thus, we decline to adopt OCC's proposal to simply write the CSPA into these guidelines. However, we agree with the staff proposal to apply certain particular principles embodied within the CSPA to transactions between public utilities and its customers for the same reasons which justify our continued review of customer notices and educational materials. In fact, in this new regulatory environment, it is imperative that consumers have even more protection from the potential abuses of competitive entities than under traditional regulation because under traditional regulation it was clear to consumers who they had a complaint against whereas in a competitive environment it may not be as clear. Finally, we agree with the consumer interests who posit that public utilities were exempted from the CSPA due to the extent of regulation applied by this Commission over utility practices. With adoption of these guidelines, however, the regulatory paradigm is changing. We do think it appropriate that the Commission, rather than common pleas and municipal courts throughout the state, remain the forum for adjudication of these disputes. The Commission's expertise in this area make it better equipped at this time to address these claims. Commission jurisdiction will benefit carriers and consumers alike and will avoid inconsistent rulings throughout the state.

As a final matter, we find that it is appropriate to make a modification to the staff's slamming proposal. The guidelines, as revised, highlight that a customer whose telecommunications carrier has been switched without the appropriate authorization may file a complaint under Section 4905.26, Revised Code, with the Commission. This is in no way a modification of, but rather an affirmation of, the rights already afforded end users pursuant to Section 4905.26, Revised Code.

XIX. REGULATORY OVERSIGHT

By this section, staff set forth the Commission's obligations to ensure that the regulatory framework for competing LECs encourages the establishment of a healthy competitive market while safeguarding the public interest as set forth in Section 4927.02, Revised Code. According to the staff proposal, the Commission reserves its right to impose alternative requirements upon certified providers. In addition, the Commission recognizes that it is Commission policy to monitor and to relieve, whenever appropriate, ILECs from certain regulatory requirements to the extent that those requirements place unreasonable obligations upon ILECs. Therefore, no later than three years after adoption, the Commission shall review on an ILEC-specific basis the continuing appropriateness of these guidelines. Should an ILEC desire to be relieved of certain regulatory obligations prior to the Commission's review, it may request relief pursuant to Sections 4927.03 or 4927.04, Revised Code. As a final matter, the guidelines set forth a streamlined formal complaint process, under Section 4905.26, Revised Code, for resolving disputes among carriers.

The ILECs (both LLECs and SLECs) commenting on this section primarily argue that the Commission's guidelines should reflect on the service being provided and not upon the entity providing the service. In addition, the competitive milestones suggested by staff, according to the ILEC respondents, place an undue burden on the incumbent local exchange providers. ALLTEL and Ameritech also propose striking the dispute resolution forum as having no legal standing or enforcement capabilities (ALLTEL initial comments at 29; Ameritech initial comments at 126). The NECs and OCC opine that staff's proposed competitive milestones are inadequate. In support of this position, AT&T points out that the FCC did not relax regulation on it until its share of the competitive toll market had dropped to 58 percent (AT&T initial comments, Appendix A, Part 2 at 56). Regarding a dispute resolution forum, OCC asserts that negotiation is preferable to litigation and, therefore, negotiation should be attempted prior to resorting to a Section 4905.26, Revised Code, complaint proceeding. However, to make this option more effective, the Commission needs to commit to resolving carrier-to-carrier disputes within a reasonable time frame (MFS initial comments at 56-57). OCC also notes that a similar expedited complaint process should be available to consumers as well as carriers (OCC initial comments at 92).

The Commission notes that we have already dismissed the arguments raised by the ILECs that the Commission must require symmetric regulation of carriers with vastly different market shares and control of bottleneck facilities. Those arguments

need not be restated here except to reaffirm our position that we will continue to monitor and reevaluate, where appropriate, alternative requirements upon any LEC (ILEC or NEC) abusing the guidelines addressed herein.

Attachment A to Appendix A (LRSIC)

Appended as an attachment to the staff's proposed guidelines was a discussion of the factors associated with performing LRSIC studies as well as a definition of terms utilized. While several commenters note that the staff's proposal represents a decent starting point in defining the factors associated with LRSIC studies, numerous comments and suggested edits were submitted to the staff's proposal. For example, the OCTA was concerned that the guidelines, as proposed, permit the ILECs to make a large number of arbitrary decisions in the process of developing a LRSIC study. To solve this concern, the OCTA recommends that the Commission identify a "task force" charged with monitoring the inputs into ILEC LRSIC studies. In addition, periodic studies addressing all services are necessary in order to ensure accuracy of any LRSIC study according to OCTA. The OCTA also notes that, of greater methodological concern, is the use of historical and current costs, data, and technologies in the development of a LRSIC study. The OCTA points out that the staff's proposal is inconsistent in this area. While not disputing the factors staff proposes to be included in a LRSIC study, Cincinnati Bell proposes a number of specific definitional edits to the staff's LRSIC attachment.

The Commission finds that clarification of this section of the proposal is appropriate. First, we would note that the purpose for including this detailed explanation of LRSIC studies is to provide a framework for LECs to use in creation of their own company-specific LRSIC studies. These guidelines represent the manner in which staff recommends providers conduct LRSIC studies. This does not mean, however, that a LRSIC study which varies from these guidelines and which is appropriately justified by the company submitting the study will not be given appropriate consideration by the Commission and its staff because we recognize that company and product-specific factors may warrant a deviation from the proposal. We do go on record, however, that we will look more carefully at the inputs into all LRSIC studies by permitting only inclusion of costs properly allocable to the intrastate telephone service operations as opposed to those more appropriately allocated to advanced video or related services. We also will more closely scrutinize the type of costs included. As a final matter, we make clear that LRSIC is a pricing tool primarily to be used to establish price floors. If the ILEC chooses to price at LRSIC, however, does not automatically establish a right for that ILEC to recover the difference between LRSIC and the fully embedded cost (including an allocation of joint and common costs) from other monopoly services. The merits of such recovery is open to considerable debate and will be carefully scrutinized before we authorize an increase in monopoly basic exchange rates.

Having thoroughly considered OCTA's proposal³⁹ that the Commission establish a task force to monitor the inputs into ILEC LRSIC studies, the Commission finds such recommendation to be unnecessary. Currently, when an ILEC submits a LRSIC study, the staff performs an in-depth review of the methodology and inputs used in creating the study. The staff then formulates a recommendation for the Commission to consider. Parties which may be affected by the ILECs proposal are given an opportunity to object to the ILEC's proposal either by filing an objection if it is a new service or by filing a complaint if it is an established service. It is unclear from the OCTA's comments whether the recommended task force would replace the role of the Commission's staff or whether it would represent an additional layer of approvals an ILEC would have to obtain prior to receiving approval of its LRSIC study. In any event, we do not agree with the implication that staff is not equipped to properly review these ILEC LRSIC studies. OCTA's comments also suggest that the proposed task force would be empowered to review the ILEC inputs which we interpret to mean actual costs. To the extent this task force is comprised of the ILEC's competitors, there would certainly arise a justified concern regarding the provision of confidential, proprietary, or trade secret information to this task force without appropriate protection. For these reasons, OCTA's proposal on this issue is rejected.

We also note that Cincinnati Bell raises some legitimate concerns and proposes some specific language to correct particular provisions of the LRSIC attachment. Many of these proposed revisions are designed to correct the inconsistency between staff's proposal that LRSIC studies should be based on forward-looking factors and specific sections which referred to using historical-type data. We agree with Cincinnati Bell that this inconsistency needs to be clarified and have made the appropriate revisions to require that, subject to the caveats listed previously in this opinion and in the guidelines, the data inputs must be based upon forward-looking information.

TRANSITION:

To provide for an orderly transition over to the local competition guidelines, the Commission concludes that the guidelines should become effective on August 15, 1996, and all certified local exchange carriers and current applicants should be automatically transitioned over to the guideline procedures as of that date. All pending NEC applications and NEC applications filed between the issuance of this Finding and Order and August 15, 1996, will be processed using the procedures currently in place at the time of this order. While these applications would not be subject to the 60-day automatic time frame, so as not to delay NECs from entering the local market, we will continue to process and approve applications pursuant to the current procedures. We are committed to reviewing the applications currently pending on an expedited basis by

³⁹ This concept was not well developed in OCTA's comments.

significantly reducing the time frames in place, especially for those cases that are not contested. For those cases that are contested, the Commission will consider such actions as limiting discovery time frames as well as narrowing the scope of discovery and limiting testimony. Any case which is filed prior to August 15, 1996, and is still pending as of August 15, 1996, and would appropriately be subject to an automatic time frame under the local competition guidelines, will automatically be converted over to the automatic approval process and will be treated as if the filing were made on August 15, 1996. Any pending NEC applications for which there is no automatic time frame established in the guidelines will be handled according to the procedures deemed appropriate by the Commission. In order to clarify the actual results of this transition procedure, the Commission will issue a procedural entry prior to the effective date of the guidelines for those NEC applications pending at that time.

The first filing of any type made by NECs on or after August 15, 1996, must include a completed Registration Form (See Attachment B to Appendix A) and the exhibits required for that type of case. For any application which is filed pursuant to an automatic time frame established in these guidelines, the automatic time frame will not begin to run until the appropriate Registration Form is filed.

CONCLUSION:

In light of the enactment of the 1996 Act, dramatic changes are occurring in the local exchange market which warrant a reevaluation of this Commission's traditional regulatory practices concerning the provision of basic local exchange services. The regulatory principles outlined above and in the attached Appendix A, represent, in this Commission's view, the appropriate guidelines by which to regulate those segments of the competitive marketplace while still affording us the ability to safeguard the public interest. The principles addressed herein will not only foster a competitive local exchange environment, but will also afford the Commission the ability to monitor the effectiveness of competition as well as the ability to redress problems with this model should any arise.

ORDER:

It is, therefore,

ORDERED, That, in accordance with the above findings, it is in the public interest to adopt, and as a result we hereby adopt, a new regulatory framework for the provision, within Ohio, of competitive local exchange telecommunication services, as set forth in Appendix A to this Finding and Order. It is, further,

ORDERED, That ILECs resubmit tariffs within 60 days of this Finding and Order which remove all restrictions on resale of services except as specifically noted otherwise in this Finding and Order. It is, further,

ORDERED, That the ILECs submit for Commission approval the revisions to ORP/SCO discussed in this Finding and Order and in Appendix A. It is, further,

ORDERED, That any telephone company currently offering basic local exchange service, who has not yet been certified to do so, shall file an application for certification pursuant to the attached guidelines. It is, further,

ORDERED, That all ILECs and NECs shall comply with this order and the attached guidelines. It is, further,

ORDERED, That the effective date of the guidelines shall be August 15, 1996. It is, further,